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December 27, 2006

BY HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

218349

Re: Finance Docket No. 34974, Keokuk Junction Railway Co. D/B/A Peoria & Western Railway – Lease and Operation Exemption – BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Comments.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.

Enclosures

cc: William A. Mullins, Esq.
Robert M. Wimbish, Esq.
Sandra L. Brown, Esq.

Berlin Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete y Nader S.C.

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BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34974

KEOKUK JUNCTION RAILWAY CO. D/B/A PEORIA & WESTERN RAILWAY
– LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY

COMMENTS OF BNSF RAILWAY COMPANY

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Attorneys for BNSF Railway Company

Dated: December 27, 2006

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34974

KEOKUK JUNCTION RAILWAY CO. D/B/A PEORIA & WESTERN RAILWAY
– LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY

COMMENTS OF BNSF RAILWAY COMPANY

BNSF Railway Company ("BNSF") respectfully submits these comments in response to the Petition for Exemption filed by Keokuk Junction Railway Co. d/b/a Peoria & Western Railway ("KJRY") on December 7, 2006, in this proceeding.

INTRODUCTION

In its Petition, KJRY seeks authority from the Surface Transportation Board ("STB" or "Board") to lease and operate a line of railroad owned by BNSF between Vermont (Milepost 94.3) and Farmington (Milepost 52.2) in Fulton County, IL (the "Line"). KJRY's lease of the Line, originally the subject of a Verified Notice of Exemption filed on August 4, 2006, in Finance Docket No. 34918, has been opposed by Ameren Energy Fuels and Services Company ("Ameren"), whose corporate affiliate, Ameren Energy Generating Company, owns and operates the Duck Creek electricity generating plant near Canton, IL.

Ameren has asserted that the lease of the Line to KJRY will result in the loss of competition between BNSF and Union Pacific Railroad Company ("UP") for the transportation of coal to the Duck Creek plant which was created in 2005 with Ameren's construction of a spur line to a KJRY line that connects to UP's system. Prior to that time, the Duck Creek plant was exclusively served by BNSF via the southern portion of the Line between Vermont and Canton. Ameren's specific concern is that the Lease would result in a bottleneck situation where KJRY would be the sole destination carrier for both movements with UP and movements with BNSF.

As explained below, however, the structure of the Lease transaction ensures that Ameren will retain the full benefits of the two-carrier coal competition which it created with the construction of the spur line to KJRY. In fact, the Lease not only preserves two-carrier access to the Duck Creek plant, but it also affords all shippers located on the Line the opportunity to not only receive rail service, but also the opportunity to receive competitive service from all of KJRY's connections, including BNSF, Canadian National Railway Company ("CN"), Iowa Interstate Railroad, Ltd. ("IAIS"), Illinois & Midland Railroad, Inc. ("IMRR"), Norfolk Southern Railway Company ("NS"), Toledo, Peoria & Western Railway Corporation ("TPW"), and UP. Accordingly, BNSF supports KJRY's Petition for Exemption and urges the Board to expeditiously consider and grant the Petition.[1]

COMMENTS

As indicated above and as further described in the attached Verified Statement of Dennis P. Eytcheson ("V.S. Eytcheson at ___"), the Duck Creek plant was exclusively served by BNSF prior to the 2005 construction of a spur line by Ameren to a nearby KJRY line that connected to UP's system at Hollis, IL. However, the only traffic on the Line was traffic to and from the Duck Creek plant. V.S. Eytcheson at 2. No other shippers were using the Line. Indeed, the northern portion of the Line between Canton and Farmington had been out of service for a

[1] BNSF notes that KJRY has offered to pursue either the Petition for Exemption filed in this docket or the Verified Notice of Exemption filed in Finance Docket No. 34918 at the Board's discretion in order to obtain approval of the lease and operation of the Line. BNSF supports KJRY's request for approval pursuant to either the Petition or the Verified Notice.

number of years and will require rehabilitation to be put back in service. *Ibid.* Upon completion by Ameren of the spur line to KJRY, BNSF was unsuccessful in its bid to continue the transportation of coal to the Duck Creek plant. Since there was no other traffic, BNSF determined to either sell or lease the Line. *Id.* at 3.

After first offering to sell the Line to Ameren but being unable to reach agreement, BNSF had discussions with KJRY with respect to the possible lease of the Line. BNSF was motivated to sell or lease the Line by its recognition that the Line, absent routine maintenance, would deteriorate to a point where substantial rehabilitation would be required to reactivate the Line. Moreover, as is generally the case with shortline operations, BNSF anticipated that KJRY's local marketing focus could generate new non-coal rail business for the leased Line. V.S. Eytcheson at 3. Further, the Lease enables BNSF to retain a long-term interest in the Line while at the same time ensuring that the Line will be maintained and be available to BNSF in the future should it determine to once again operate over the Line. *Ibid.* (Section 5.2 of the Lease obligates KJRY to maintain the Line, at its cost, to at least FRA Class I Track Safety Standards and to at least FRA Class II Track Safety Standards if BNSF were to be awarded a contract for coal transportation to Duck Creek).[2]

In its discussions with KJRY concerning a lease, BNSF recognized the need to preserve its ability to provide competitive service to the Duck Creek plant, and BNSF structured the Lease to that end. V.S. Eytcheson at 3. BNSF also recognized that potential local shippers on the Line would more likely use rail service if KJRY were to be able to provide them with competitive

[2] A complete copy of the Lease has been submitted by KJRY as Attachment 1 to the Verified Statement of William J. Brennan ("V.S. Brennan") (Exhibit F to the Highly Confidential version of the Petition for Exemption).

long-haul transportation offerings from all of KJRY's connections, including BNSF, CN, IAIS, IMRR, NS, TPW and UP. *Id.* at 3-4. Accordingly, with the limited exception of bridge traffic that would move between BNSF's interchange at Vermont and another line-haul carrier (see Section 4.6 of the Lease), BNSF agreed with KJRY that there would be no "paper barriers" or other marketing restrictions with respect to traffic to and from any shippers that KJRY could develop on the Line.[3] *Id.* at 4.

In order to preserve two-carrier access to the Duck Creek plant (as well as to other potential shippers on the Line), Article XVII of the Lease provides that BNSF will retain the "authority to establish through routes and offer through freight rates via through routes involving both Lessor and Lessee with interchange between Lessor and Lessee at Vermont, Illinois". This includes the exclusive right to establish routes and offer rates for coal to the Duck Creek plant. V.S. Eytcheson at 4. Under this arrangement, BNSF retains its full market presence at Duck Creek and on the Line since BNSF's line-haul rates would be the only rates offered to such traffic. KJRY would provide origination and/or termination services and would be compensated by BNSF on a per-car allowance basis as set forth in the Lease. KJRY would, however, have no ability to quote or challenge rates and in the normal course of business would not know the contract rates BNSF would quote to Duck Creek or other shippers on the Line. *Id.* at 4 (Article XVII provides that KJRY "automatically concurs" in all through rates established by BNSF). *See also* Exhibit G to the Petition which confirms the comprehensive limitations on KJRY's access to pricing information under the Lease.

[3] With regard to such potential local shippers, BNSF is aware of a new Central Illinois Energy ethanol plant being constructed near Canton which could be served by KJRY via the Line. In addition, two existing industries – Hitchcock Scrap Yard, Inc. and United Paving & Construction Co. – have indicated a willingness to use rail service. V.S. Eytcheson at 4.

In addition, BNSF required inclusion in the Lease of language in Section 3.6 providing it with the right, subject to certain conditions set forth in the Lease, to terminate the Lease without cause on 30 days' notice. This termination right effectively enables BNSF to monitor and police as necessary any conduct by KJRY detracting from or degrading BNSF's ability to provide competitive service. *See also* V.S. Eytcheson at 5 (Section 23.5 of the Lease obligates KJRY to handle Ameren's coal trains in a "prompt and efficient manner" and "without undue delay").

In sum, the provisions included in the Lease effectively ensure that the Duck Creek plant will continue to receive competitive rail service for its coal needs. Before the transaction, BNSF's routing competed with the UP/KJRY routing, and the post-transaction situation will be exactly the same given BNSF's retention of full pricing authority and given KJRY's fee structure which will enable BNSF to offer competitive prices. In addition to competition being fully preserved at the Duck Creek plant, competition will be enhanced by the establishment of connections with multiple carriers which should incent other potential shippers currently located on the Line or considering locating on the Line to use rail. In the end, the Lease ensures that competition will be preserved (and, in fact, enhanced), that the Line will be maintained, that it will generate a level of income for BNSF, and that KJRY will have the opportunity to find new rail business.

Accordingly, for the reasons set forth above, BNSF respectfully submits that KJRY's Petition for Exemption be expeditiously granted.

Respectfully submitted,

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Dated: December 27, 2006

[illegible]

Verified Statement
of
Dennis P. Eytcheson

1. My name is Dennis P. Eytcheson. I am the Director of Network Rationalization for BNSF Railway Company ("BNSF"). My office address is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2828.

2. In my position as Director of Network Rationalization, I am responsible for negotiating line sales and leases.

3. I have been with BNSF, or its predecessor company The Atchison, Topeka and Santa Fe Railway Company, since October 16, 1971. I hold a Bachelor of Arts degree from Bradley University, Peoria, Illinois and a Masters of Business Administration degree from Illinois State University, Normal, Illinois. I have worked in the Network Development Area, primarily selling or leasing BNSF rail lines to shortline operators, since May of 1999. Prior to my current appointment, I have held various positions in the Marketing and Strategic Studies Departments. Since 1999, I have negotiated the sale or lease of hundreds of miles of BNSF rail lines to various shortlines.

4. This Verified Statement addresses the circumstances surrounding BNSF's decision to lease a line of railroad owned by BNSF between Vermont (Milepost 94.3) and Farmington (Milepost 52.2) in Fulton County, IL (the "Line") to Keokuk Junction Railway Co. ("KJRY"). KJRY's lease and operation of the Line has been opposed by Ameren Energy Fuels and Services Company ("Ameren"), whose corporate affiliate, Ameren Energy Generating Company, owns and operates the Duck Creek electricity generating plant near Canton, IL.

5. I understand that Ameren has opposed the lease of the Line to KJRY on the grounds that it will purportedly result in the loss of competition between BNSF and Union Pacific Railroad Company ("UP") for the transportation of coal to the Duck Creek plant which was created in 2005 with Ameren's construction of a spur line to a KJRY line that connects to UP's system. Prior to that time, the Duck Creek plant was exclusively served by BNSF via the southern portion of the Line between Vermont and Canton. Ameren's specific concern is apparently that the Lease would result in a bottleneck situation where KJRY would be the sole destination carrier for both movements with UP and movements with BNSF.

6. As explained below, I disagree with Ameren's position. The structure of the Lease transaction ensures that Ameren will retain the full benefits of the two-carrier coal competition which it created with the construction of the spur line to KJRY. In fact, the Lease not only preserves two-carrier access to the Duck Creek plant, but it also affords all shippers located on the Line the opportunity to not only receive rail service, but also the opportunity to receive competitive service from all of KJRY's connections, including BNSF, Canadian National Railway Company ("CN"), Iowa Interstate Railroad, Ltd. ("IAIS"), Illinois & Midland Railroad, Inc. ("IMRR"), Norfolk Southern Railway Company ("NS"), Toledo, Peoria & Western Railway Corporation ("TPW"), and UP.

7. As mentioned, the Duck Creek plant was exclusively served by BNSF prior to the 2005 construction of a spur line by Ameren to a nearby KJRY line that connected to UP's system at Hollis, IL. However, the only traffic on the Line was traffic to and from the Duck Creek plant. No other shippers were using the Line. Indeed, the northern portion of the Line between Canton and Farmington had been out of service for a number of years and will require rehabilitation to be put back in service.

8. Upon completion by Ameren of the spur line to KJRY, BNSF was unsuccessful in its bid to continue the transportation of coal to the Duck Creek plant. Since there was no other traffic, BNSF determined to either sell or lease the Line.

9. After first offering to sell the Line to Ameren but being unable to reach agreement, BNSF had discussions with KJRY with respect to the possible lease of the Line. BNSF was motivated to sell or lease the Line by its recognition that the Line, absent routine maintenance, would deteriorate to a point where substantial rehabilitation would be required to reactivate the Line. Moreover, as is generally the case with shortline operations, BNSF anticipated that KJRY's local marketing focus could generate new non-coal rail business for the leased Line. Further, the Lease enables BNSF to retain a long-term interest in the Line while at the same time ensuring that the Line will be maintained and be available to BNSF in the future should it determine to once again operate over the Line.

10. With respect to maintenance of the Line, Section 5.2 of the Lease obligates KJRY, at its cost, to maintain the Line to at least FRA Class I Track Safety Standards. That section also requires KJRY to maintain the Line to at least FRA Class II Track Safety Standards in the event BNSF is awarded a contract for coal transportation to the Duck Creek plant, and it provides that KJRY's failure to maintain the Line so that it is capable of handling Ameren's coal traffic will be deemed a material breach of the Lease.

11. In its discussions with KJRY concerning a lease, BNSF recognized the need to preserve its ability to provide competitive service to the Duck Creek plant, and BNSF structured the Lease to that end by, as I explain below, retaining full marketing and pricing authority. BNSF also recognized that potential local shippers on the Line would more likely use rail service if KJRY were to be able to provide them with competitive long-haul transportation offerings

from all of KJRY's connections, including BNSF, CN, IAIS, IMRR, NS, TPW and UP. Accordingly, with the limited exception of bridge traffic that would move between BNSF's interchange at Vermont and another line-haul carrier as set forth in Section 4.6 of the Lease, BNSF agreed with KJRY that there would be no "paper barriers" or other marketing restrictions with respect to traffic to and from any shippers that KJRY could develop on the Line.

12. As to potential local shippers, BNSF is aware of a new Central Illinois Energy ethanol plant being constructed near Canton which could be served by KJRY via the Line. In addition, two existing industries – Hitchcock Scrap Yard, Inc. and United Paving & Construction Co. – have indicated a willingness to use rail service were it to be reinstituted.

13. In order to preserve two-carrier access to the Duck Creek plant (as well as to other potential shippers on the Line), Article XVII of the Lease provides that BNSF will retain the "authority to establish through routes and offer through freight rates via through routes involving both Lessor and Lessee with interchange between Lessor and Lessee at Vermont, Illinois". This includes the exclusive right to offer rates for coal to the Duck Creek plant, and BNSF is given the "sole and absolute" discretion to specify junctions and routes for all traffic under the Lease. Under this arrangement, BNSF thus retains its full market presence at Duck Creek and on the Line since BNSF's line-haul rates would be the only rates offered to such traffic. KJRY would provide origination and/or termination services and would be compensated by BNSF on a per-car allowance basis as set forth in the Lease. KJRY would, however, have no ability to quote rates and in the normal course of business would not know the contract rates BNSF would quote to Duck Creek or other shippers on the Line. Indeed, Article XVII of the Lease provides that KJRY "automatically concurs" in all through rates established by BNSF as long as it receives the applicable per-car dollar fee.

14. In addition, BNSF required inclusion in the Lease of language in Section 3.6 providing it with the right, subject to certain conditions set forth in the Lease, to terminate the Lease without cause on 30 days' notice. This termination right effectively enables BNSF to monitor and police as necessary any conduct by KJRY detracting from or degrading BNSF's ability to provide competitive service. For instance, Section 23.5 of the Lease obligates KJRY to handle Ameren's coal trains in a "prompt and efficient manner" and not to cause "undue delay in the interchange delivery, unloading or return of Ameren's empty coal trains." This section further provides that KJRY's default of these terms shall be subject to all remedies available at law or in equity to BNSF.

15. The provisions included in the Lease effectively ensure that the Duck Creek plant will continue to receive competitive rail service for its coal needs. Before the transaction, BNSF's routing competed with the UP/KJRY routing, and the post-transaction situation will be exactly the same given BNSF's retention of full pricing authority and given KJRY's fee structure which will enable BNSF to offer competitive prices. In addition to competition being fully preserved at the Duck Creek plant, competition will be enhanced by the establishment of connections with multiple carriers which should incent other potential shippers currently located on the Line or considering locating on the Line to use rail.

VERIFICATION

I, Dennis P. Eytcheson, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on December 19, 2006.

Dennis P. Eytcheson

Dennis P. Eytcheson

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December 2006, a true and correct copy of the foregoing Comments of BNSF Railway Company was served by overnight delivery on the following:

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